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LLP AND ERNST & YOUNG U.S. LLP**

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

DAVID HO, JOHN MAXTON,
NATHAN LAY, and SARAH
FERNANDEZ on behalf of
themselves and others similarly
situated and on behalf of the general
public and DOES 1-20.

Plaintiff.

v.

ERNST & YOUNG LLP.

Defendant.

JOSEPH LANDON, individually and
on behalf of all others similarly
situated.

Plaintiffs.

v.

ERNST & YOUNG LLP, a limited liability partnership; ERNST & YOUNG U.S. LLP, a limited liability partnership; and DOES 1-100, inclusive.

Defendants.

Case No. CV 05-04867-JF (HRL)

[Assigned for all purposes to the
Honorable Jeremy Fogel]

**DEFENDANT ERNST & YOUNG
LLP'S ADMINISTRATIVE MOTION
TO CONSIDER WHETHER CASES
SHOULD BE RELATED**

Complaint Filed: September 27, 2005

Case No. CV 08-02853-WHA

[Assigned for all purposes to the
Honorable William H. Alsup]

Complaint Filed: February 21, 2008

ADMINISTRATIVE MOTION TO CONSIDER
WHETHER CASES SHOULD BE RELATED

I. INTRODUCTION

Pursuant to Civil Local Rule 3-12, defendant Ernst & Young LLP ("Ernst & Young") hereby moves this Court for an Order deeming *Ho v. Ernst & Young LLP*, Case No. CV 05-04867, and *Landon v. Ernst & Young LLP and Ernst & Young U.S. LLP*, Case No. CV 08-02853, related and assigning *Landon* to Judge Fogel. Both actions involve substantially the same parties, transactions, and events, and relating the cases and assigning the later-filed *Landon* case to Judge Fogel will avoid unnecessary duplication of labor and expense and the risk of conflicting results.

II. BACKGROUND

13 *Ho v. Ernst & Young LLP*, Case No. CV 05-04867, was filed on September 27,
14 2005 in the Santa Clara County Superior Court and was removed to the Northern
15 District of California on November 29, 2005. Declaration of Anastasia M. Boles
16 (“Boles Decl.”) ¶ 2. The *Ho* action is brought on behalf of a putative class of
17 individuals who work or worked for Ernst & Young in California in the job positions of
18 Staff and Senior. Ho First Amended Complaint ¶ 9. Plaintiffs challenge defendant’s
19 classification of these employees as exempt from California’s overtime and meal break
20 laws. *Id.* at ¶ 11.

21 *Landon v. Ernst & Young LLP and Ernst & Young U.S. LLP*, Case No. CV 08-
22 02853, was filed in Placer County Superior Court on February 21, 2008, removed to the
23 Eastern District on April 25, 2008, and transferred to the Northern District on June 13,
24 2008.¹ Boles Decl. ¶ 3. Landon seeks to represent a class of unlicensed “salaried

¹ Pursuant to Local Rule 7-11(a), Ernst & Young requested that Landon's counsel stipulate to this motion. Landon's counsel declined because they first wanted to review materials related to Ernst & Young's pending motion for summary judgment in *Ho*, and those materials are under seal. Boles Decl. ¶ 4. Notably, Landon's counsel previously stipulated to the transfer of this case from the Eastern District after Ernst & Young moved to change venue in light of the fact that the previously-filed *Ho*

1 exempt employees doing accounting work" in California, also challenging Ernst &
 2 Young's classification of such employees as exempt from California overtime and meal
 3 break laws. Boles Decl. ¶ 3, Exh. B ("Landon Complaint") at ¶ 20. With the exception
 4 of such employees with the job title of "Senior 3," all individuals Landon purports to
 5 represent are members of the putative class in the *Ho* litigation. *See* Boles Decl. ¶ 5,
 6 Exh. C (Declaration of Daria Hodapp) at ¶ 2; Landon Complaint ¶¶ 16-19; Ho First
 7 Amended Complaint ¶¶ 9-11.

8 **III. THE COURT SHOULD RELATE THE *HO* AND *LANDON* ACTIONS**

9 Two actions are related when both actions "concern substantially the same
 10 parties, property, transactions or event" and it is likely that there will be an "unduly
 11 burdensome duplication of labor and expense or conflicting results if the cases are
 12 conducted before different Judges." Civil Local Rule 3-12. Where two separate class
 13 actions are brought against the same defendant involving substantially similar claims
 14 and class definitions, the cases are related. *See, e.g., McGee v. Ross Stores, Inc.*, No. C-
 15 06-7496, 2007 U.S. Dist. LEXIS 76479, at *3-4 (N.D. Cal. Oct. 1, 2007); *In re Leapfrog*
 16 *Enters. Sec. Litig.*, No. C-03-05421, 2005 U.S. Dist. LEXIS 44899, at *5-6 (N.D. Cal.
 17 July 5, 2005) (stating that it would be "unfair to [defendant] to require it to defend
 18 similar lawsuits in two Divisions of the same court at the same time.").

19 **A. Substantially The Same Parties And Events**

20 The alleged *Landon* class is almost completely subsumed by the alleged *Ho* class,
 21 Ernst & Young is the defendant in both actions, and the employment policies and
 22 practices at issue in both actions are identical. The causes of action in the *Landon*
 23 Complaint are substantially similar to the causes of action in the *Ho* First Amended
 24 Complaint and revolve around: (1) whether certain Ernst & Young employees were
 25 properly classified as exempt, (2) whether Ernst & Young improperly failed to pay those
 26 employees for overtime, and (3) whether Ernst & Young failed to provide meal breaks

27 case was pending in this Court. Boles Decl. ¶ 3, Exh. A ("Stipulation and [Proposed] Order to Transfer
 28 Action to Northern District of California").

1 required by California law. The cases involve common legal questions, including
 2 whether a class should be certified and whether the employees are properly classified as
 3 exempt. Both actions also seek substantially the same equitable relief. Because of the
 4 numerous commonalities between the *Ho* and *Landon* cases, the two cases involve
 5 “substantially the same parties, property, transactions or event” as defined by Civil
 6 Local Rule 3 – 12.

7 **B. The Interests of Judicial Economy Support Relating The Cases**

8 Conducting the *Landon* and *Ho* cases before different judges would result in an
 9 “unduly burdensome duplication of labor and expense” and threaten conflicting results
 10 between substantially the same parties. Plaintiffs in both actions may rely on many of
 11 the same witnesses, including the staff and seniors whose job classifications are at issue,
 12 the managers and partners who work with them, and representatives of Ernst & Young
 13 testifying regarding the job expectations and corporate structure generally. In fact,
 14 Plaintiff Joseph Landon even signed a declaration in support of class certification in the
 15 *Ho* action. Boles Decl. ¶ 6, Exh. D. The cases would involve substantially similar
 16 documentary evidence as well, which could include Ernst & Young performance
 17 evaluations, job descriptions, training curriculum, and time records. In the *Ho* case
 18 alone, more than 30,000 pages of documentation and several discs containing
 19 voluminous training and timekeeping data have already been produced by Ernst &
 20 Young. Boles Decl. ¶ 7. To have a second and substantially similar action pending
 21 before this Court, with duplicative witnesses and evidence, would be a waste of this
 22 Court’s time and an unnecessary expenditure of costs for all parties.

23 Moreover, Judge Fogel and Magistrate Judge Lloyd are highly familiar with all of
 24 the matters at issue in this case. They have decided numerous motions in connection
 25 with *Ho*, including Defendant’s Motion for Summary Judgment as to named plaintiff
 26 David Ho, Plaintiff’s Motion to Amend Complaint, Defendant’s Motion for Protective
 27 Order, and five motions regarding various discovery disputes. Boles Decl. ¶ 8.
 28 Defendant’s Motion for Summary Judgment as to the remaining named plaintiff, Sarah

1 Fernandez, is also currently pending before Judge Fogel. Given Judge Fogel's and
 2 Magistrate Judge Lloyd's familiarity with the issues at stake, judicial economy favors
 3 them presiding over the *Landon* action as well.

4 Given the substantial similarity between the actions, there is also a substantial risk
 5 that there may be conflicting results, including conflicting determinations on class
 6 certification and the merits. *See, e.g., Dusky v. Bellasaire Invs.*, No. CV-07-874, 2007
 7 U.S. Dist. LEXIS 95501, at *8 (C.D. Cal. Dec. 4, 2007) ("The real risk of inconsistent
 8 judgments arises if the parties are allowed to proceed with dispositive motions or trial in
 9 an uncoordinated manner.").

10 **IV. CONCLUSION**

11 For all the reasons stated above, Defendant Ernst & Young moves the Court to
 12 deem the *Ho* and *Landon* cases related and to assign both cases to Judge Fogel.

13 Dated: July 10, 2008

14 AKIN GUMP STRAUSS HAUER &
 15 FELD LLP
 Catherine A. Conway
 16 Gregory W. Knopp
 Anastasia M. Boles

17 By Anastasia M. Boles
 18 Anastasia M. Boles
 19 Attorneys for Defendants Ernst & Young LLP
 and Ernst & Young U.S. LLP

1 PROOF OF SERVICE

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 I am employed in the County of Los Angeles, State of California. I am over the age of 18 and
4 not a party to the within action; my business address is: 2029 Century Park East, Suite 2400, Los
Angeles, CA 90067.

5 On July 10, 2008, I served the foregoing document(s) described as:

6 **DEFENDANT ERNST & YOUNG LLP'S ADMINISTRATIVE MOTION TO**
7 **CONSIDER WHETHER CASES SHOULD BE RELATED**

8 on the following interested party(ies) below, using the following means:

9 Wayne S. Kreger, Esq.
10 William A. Baird, Esq.
11 Milstein, Adelman & Kreger, LLP
12 2800 Donald Douglas Loop North
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Counsel for Joseph Landon

13 BY MESSENGER SERVICE I served the documents by placing them in an envelope or package addressed
14 to the respective address(es) of the party(ies) stated above and providing them to a professional
messenger service for service.

15 Steven Elster, Esq.
16 Law Offices of Steven Elster
17 785/E2 Oak Grove Road #201
Concord, CA 94518-3617
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Counsel for Joseph Landon

19 BY OVERNIGHT DELIVERY I enclosed the document(s) in an envelope or package provided by an
overnight delivery carrier and addressed to the respective address(es) of the party(ies) stated above. I
placed the envelope or package for collection and overnight delivery at an office or a regularly utilized
drop box of the overnight delivery carrier.

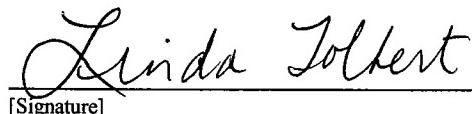
21 **All parties identified for Notice of Electronic Filing generated by the Court's**
22 **CM/ECF system under the Ho, et al. v. Ernst & Young LLP, Case No. CV**
05-04867-JF (HRL)

23 I declare that I am employed in the office of a member of the bar of this court at whose
24 direction the service was made.

25 Executed on July 10, 2008 at Los Angeles, California.

27 Linda Tolbert

[Print Name of Person Executing Proof]


[Signature]